Pages 1 - 42 and 85 - 89
(Pages 43 - 84 Filed Under Seal by Order of the Court, and Bound Separately.)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

WAYMO LLC, Plaintiff, VS. UBER TECHNOLOGIES, INC.; OTTO TRUCKING LLC; and OTTOMOTTO LLC, Defendants.	**NO. C 17-00939 WHA**

San Francisco, California
Wednesday, August 23, 2017

PUBLIC EXCERPT OF TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff Waymo LLC:
Quinn, Emanuel, Urquhart & Sullivan LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
(415) 875-6600
BY: FELIPE CORREDOR
JORDAN ROSS JAFFE

For Defendant Uber Technologies, Inc.:
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
(415) 268-7000
(415) 268-7522 (fax)
BY: ESTHER KIM CHANG
MICHAEL A. JACOBS

Reported By: Lydia Zinn, CSR No. 9223, FCRR, Official Reporter

APPEARANCES:

For Defendant Uber Technologies, Inc.:
Uber Technologies, Inc.
1455 Market Street, 4th Floor
San Francisco, CA 94103
(415) 533-7652
BY: AARON JAMES BERGSTROM

For Defendants Otto Trucking LLC; Ottomotto LLC:
Goodwin Procter LLP
Three Embarcadero Center
San Francisco, CA 94111
(415) 733-6000
(415) 677-9041 (fax)
BY: BRETT MICHAEL SCHUMAN

Wednesday - August 23, 2017 **8:58 a.m.**

P R O C E E D I N G S

---000---

THE CLERK: Civil 17-939. It's Waymo, LLC, versus Uber Technologies. It's on for a tutorial. Counsel, can you please state your appearances?

MR. JAFFE: Jordan Jaffe of Quinn Emanuel, on behalf of the plaintiff, Waymo.

MR. CORREDOR: And Felipe Corredor, also of Quinn Emanuel.

MR. JACOBS: Good morning, Your Honor. Michael Jacobs, from Morrison & Foerster, for Uber and Ottomotto. With me is Esther Kim Chang; and Aaron Bergstrom, from Uber's legal department.

THE COURT: Great.

MR. SCHUMAN: Your Honor, Brett Schuman, from Goodwin Procter, on behalf of Otto Trucking.

THE COURT: Thank you for all coming today.

This is only about one thing. I'm trying to understand Trade Secret Number 96. And at the last hearing Mr. González said that the file was enormous, and hadn't even been produced to the other side -- hadn't even been produced to his side. So I got to thinking about this problem. And I would like to understand the character of that file, and the way in which it has been disclosed as a, quote, "trade secret," close quote.

So I'm open to ideas, but my tentative thought is to either come down there, and just sit there, and let you leaf through it, computer page by computer page, so that I can get an idea of what we're talking about. So how's that sound?

MR. JAFFE: On behalf of Waymo, that's fine. We have a computer here with the files. We actually have the entire repository of the 14,000 files loaded up on this computer. And one file path corresponds to Trade Secret 96 that's specified.

THE COURT: Yeah. I don't want to see anything but 96, because I don't want to cross-pollinate my mind with something else. I just want to focus, laserlike, on Number 96.

MR. JAFFE: Understood. We just loaded up the computer with the files exactly as we made them available for inspection and discovery at the beginning of the case. So that was the reason that they're all on there, but you can -- the one folder that's there for Trade Secret 96 is up for your --

THE COURT: All right. Now, here's the other question I've got. Let me just get a general overview. If we were to leaf through each page in Number 96, how many pages on the computer screen would there be?

MR. JAFFE: So it might be easier to show you than to explain that, but so what the folder is, is one schematic.

So there's a number of files that relate to the one schematic that provide information; but under the program that's installed for this software -- it's called "Altium" --

this is a representation of one printed circuit board. And there's a -- I'm looking at it right now. There are -- there are ten files in this specific folder, but they all open to this one schematic that you review with Altium.

THE COURT: And what does the circuit, in general terms --

It looks like we've got at least one reporter, or two reporters here. Are you two out there members of the public, or are you with these parties?

UNIDENTIFIED SPEAKER: Your Honor, a member of the public.

THE COURT: You're what?

UNIDENTIFIED SPEAKER: A member of public.

THE COURT: Member of public.

And what are you, back there?

UNIDENTIFIED SPEAKER: I'm a reporter.

THE COURT: All right.

UNIDENTIFIED SPEAKER: Is this closed? I'm sorry. I didn't hear.

THE COURT: No, it's not closed yet. I've got to decide how to handle that; but no, you're most welcome for the moment. Thank you. Have a seat.

Hm. Without disclosing any trade secret, what does this board do for a living?

MR. JAFFE: This is one of the schematics related to

a part of the -- one of Waymo's LiDAR devices for transmitting light.

THE COURT: Okay. So to go back to my question, if we were to go through the entire file that's designated as Number 96, how many times do we have to click the "Enter" button to get through all of the pages?

MR. JAFFE: So I think there's some information included in the schematic, but it would be one schematic that you would open up. There are different layers in the schematic in terms of the different types of components that are on the printed circuit board, but there's just one schematic.

So if Your Honor is asking, *How many schematics would you have to page through?*, I think the answer is, *There's just one*, although, you know --

THE COURT: Now, tomorrow when your offer of proof is due, are you going to be contending and give proof that Number 96 has, in fact, been used by Uber?

MR. JAFFE: Yes, Your Honor.

THE COURT: You are. Okay.

Exactly? Exactly as the circuit board, or some alleged equivalent of it, or some portion of it?

MR. JAFFE: So on this part I would be a little reticent to talk about the overlap of the details in the public session.

THE COURT: Well, are you going to explain it

tomorrow, though, in your filing?

MR. JAFFE: Yes, we can. I mean, one of the things I --

THE COURT: You should. I mean, this is -- it's important for me to understand what it is that Uber --

For example, if this has got 152 parts, and you're contending that Uber stole all 152 parts, and it looks exactly the same, okay, that's pretty good for you if that's true.

On the other hand, if it's -- they only took 29 parts, and they're not really the same values, and they're arranged slightly differently in some analogs, and some --

I don't know, that may not be -- that may be in the public domain. I don't know what that --

But how are they supposed to -- what I'm trying to do is get a feeling for how hard it would be for Uber to go and show that Number 96 is in the public domain.

MR. JAFFE: Right. Understood. And I would actually like to explain that, although I don't want to disclose anything in terms of possible trade secrets. So I'm happy to explain that for you.

THE COURT: Here's what we're going to do first. We're going to first let me see it. So I am going to get off the bench, and I'm going to come down there, and I'm going to sit there. And I want you to crank that thing (indicating) up. And each side can show me what they want to show me about

Number 96.

And if you want me to exclude people from the courtroom, okay, I will; but I hate to do that, unless it's really going to reveal something. So let's wait until the moment comes when you feel like you've got to reveal a trade secret before we exclude anybody.

MR. JAFFE: Understood, Your Honor. The only thing I wanted to explain is in terms of what about this file we are contending is a trade secret, and -- which we've explained on our trade-secret list, and how we're going to explain that they've used it. That delves into some confidential information. And so I would like the opportunity to explain that to Your Honor, but it does get into confidential information.

THE COURT: Well, can we do that after I look at it?

MR. JAFFE: Yes.

THE COURT: All right. I'm going to come down.

Now, you members of the public are not going to be able to see what I'm seeing. And so -- but you're welcome to stay for the time being. Right?

I'm going to come off the bench now.

My court reporter -- will you be able to hear well enough to transcribe what goes on here?

REPORTER: I hope to. Yes, sir.

THE COURT: Okay. Good.

REPORTER: Would you like me to move?

THE COURT: It's up to you.

(Discussion off the record.)

THE COURT: So is the court reporter ready?

All right. I'm sitting at counsel table, looking at a laptop with -- looks like a diagram of photograph of a printed circuit board. Okay. All right. So is this Number 96?

MR. JAFFE: It is.

THE COURT: Is that the first page of it?

MR. JAFFE: That's the whole -- I mean, you can zoom in. It's a model, and there are layers, but this is -- this is the whole thing.

MR. JACOBS: Well --

MS. CHANG: Your Honor, if Waymo's counsel is done, I would also like to navigate and show you some --

THE COURT: I'd like for you to navigate. I'd like you to navigate through all of the complexities, so that I can understand what the problem is with respect to the Uber side trying to show that this is in the prior art, or some part of it's in the prior art. Okay. All right.

MR. JAFFE: So --

THE COURT: Okay. So show me --

MS. CHANG: May I go?

MR. JAFFE: Yeah. Go ahead.

THE COURT: You're the one with an axe to grind.

MS. CHANG: Exactly. So I'm just going to --

MR. JACOBS: Why don't you sit here?

THE COURT: Why don't you have that seat?

What's your name, again?

MS. CHANG: Esther Chang.

So this is the folder that counts Trade Secret 96, alleging --

MR. JAFFE: And then I don't know if Your Honor has --

THE COURT: Well, wait, wait, wait.

MR. JAFFE: This is the trade-secret list with Trade Secret 96.

THE COURT: Okay. Can I keep this? Probably not. Okay.

MR. JAFFE: You can. I don't think it has my writing on it.

THE COURT: Ms. Chang, what are you trying to do?

MS. CHANG: I'm trying to show the file extensions. I'll just -- I think this is a confirmation for me right here. Okay. So I'm just going to open --

THE COURT: What does that say right there? What does that number signify?

MS. CHANG: The size of the file: 4.9 megs.

THE COURT: 4.9 megs. Okay.

MS. CHANG: It's a bit -- Mr. Jaffe is correct that

this is the main file, but there are also -- there's also information in the other files which I will show you. Okay. So if you look at this schematic --

MR. JAFFE: And there's -- I'd just remind everyone there's a reporter here.

MS. CHANG: Okay.

THE COURT: She hasn't said anything yet.

MR. JAFFE: I know. I know.

THE COURT: She hasn't revealed any trade secrets.

MR. JAFFE: I know. And I just want to be, in an abundance of caution --

THE COURT: Throw yourself in the front of the oncoming train when that occurs, but it hasn't occurred yet.

MS. CHANG: Okay. So first of all, you can see that there are different layers that you can look at it. It's hard to tell what's being --

THE COURT: The layers are down here?

MS. CHANG: Yeah. These are different tasks. When we look at a different view -- you'll be more clear when you get to see what the different layers are; but right now we're in the 3-D view. And you can see there are various components on here, and you can zoom in to various areas.

So it's unclear to us what exactly about the schematic is the trade secret. Is it, for example, that we have to have each of these components? Is it that?

THE COURT: Well, zoom in on one of them. Take D1D.

MS. CHANG: Okay. And when you click on this, you get information about that component. So you can see the I.D.

THE COURT: The what?

MS. CHANG: The I.D. for that part, as well as --

THE COURT: Wait, wait. Don't go any further.

MS. CHANG: Okay.

THE COURT: Let me see what that brings up.

MS. CHANG: So it shows you what that is here. There's the name.

THE COURT: Of the component?

MS. CHANG: Yep. You will also see later there's another file that contains development materials. And it shows you the exact part number, and the vendor that that part is coming from.

THE COURT: Okay.

MS. CHANG: It's differently -- just like we go with that component. You can click on all of these components to get the name, or the part number; various things, like the position. You have -- there's an X-Y location. The placement. You can scroll down here.

THE COURT: Ah, I know what it says. One microfarad.

MS. CHANG: Yep.

THE COURT: What is the 04?

MS. CHANG: I'm not sure. It's a parameter of that

component. I don't know if Waymo's counsel --

THE COURT: What does Waymo's counsel think that --

MR. CORREDOR: That might be a part number.

THE COURT: No, it's not a part number. X7R. What does that mean?

MR. CORREDOR: That might be that means volts. It's probably a variance tolerance. I'm not sure.

MS. CHANG: Yep.

THE COURT: Okay. Show me some more.

MS. CHANG: One thing that you'll -- I don't know if -- so it's also unclear to us whether they're still watching the spacings between these components; but to the extent they are, these are equal. These five are equal.

THE COURT: Does it say that?

MS. CHANG: No, but you can measure it. We figured it out.

THE COURT: All right. So --

MS. CHANG: But it's unclear to us whether they're also including that aspect of this four.

MR. JAFFE: I don't think that's correct, although --

MS. CHANG: Our expert measured it, and that's what he said; but I can go back and check that.

THE COURT: Well, you know X. A squared plus B squared equals C squared. We can do the math ourselves, and figure out --

MS. CHANG: Yeah.

THE COURT: -- whether those are equal or not.

MS. CHANG: Our expert told us that these five were, but I can double check.

THE COURT: All right. So me let me just put some things at random.

MR. CORREDOR: I think there's some confusion on the spacing. So there can be, like, the absolute distance versus the vertical spacing, which may be more important.

MS. CHANG: So your expert said that the hypotenuse was the operative -- operative parameter.

MR. JAFFE: (Shakes head from side to side.)

MS. CHANG: The A squared plus B squared equals C squared.

THE COURT: All right. So just click on that white thing there, and see what that is.

MS. CHANG: This is, I believe, the connector. And if you --

THE COURT: What do you mean: Connector?

MS. CHANG: So this is where all of the --

THE COURT: -- the inputs go and the outputs? Inputs and outputs are --

MS. CHANG: It's connected to the electrical circuit of the board; to the electrical circuit board. Afterward, when you hover over various components, it just gives you

information about that implement. And then this is the part --

THE COURT: The whole X is a --

MS. CHANG: -- very door. Yeah.

THE COURT: Correct, or Bolex.

MS. CHANG: That said part number, I'm pretty sure.

THE COURT: Bottom to top.

MS. CHANG: Bottom to top.

THE COURT: I said bottom to top. Okay. Let's take one, either random -- what is that guy right there?

MS. CHANG: It's an inductor.

THE COURT: Let's look at it.

MS. CHANG: So this area relates to their '936 Patent. And you double click on it. It gives you information.

THE COURT: SND. I know what everything else is, but what does "SND" mean (indicating)?

MR. JAFFE: Maybe juncture. I'm not sure.

MS. CHANG: If you scroll up, there's additional information regarding the X-Y location, and the placement of the component, as well as the parameters of the component. You see the component properties here (Indicating). Location information.

THE COURT: Mm-hm. So if I wanted to figure out what -- go back to the main diagram. If I wanted to know what the inductor is electrically connected to, how do I figure that out?

MS. CHANG: One reason -- that's strange. Okay. So in our version, the board planning mode is activated. And that shows you how -- it shades a region that shows you how each part is connected electrically; but for some reason, it's not activated in your version.

MR. JAFFE: This may be -- is this the trial version?

MR. CORREDOR: Yeah, this is the one we tried.

MS. CHANG: Okay. So we have a trial version, as well. And our board planning mode is activated. And that's how we were able to see what the electrical connections are. It will shape -- for example, it will shade these drivers to the one that it connects to.

MR. JACOBS: Esther, isn't there also a schematic?

MS. CHANG: There is a schematic, but it doesn't show the connections; but I can go to it -- the schematic. It's in --

THE COURT: What good does it do you, unless you know how it's connected?

MR. JACOBS: I think that's what the schematic should show.

MS. CHANG: These are the schematics, but I don't think these show you the --

THE COURT: Looks upside down, oddly enough.

MS. CHANG: Yeah.

MR. CORREDOR: Your Honor, I've been informed that

that's a software bug. It's a different version.

THE COURT: This is going to be no good. You're going to show this to the jury upside down? That's not good.

MS. CHANG: I think they have different versions, Your Honor, than the upside-down schematic. So I'm not sure why their version that they have is not showing data --

THE COURT: All right. So --

MS. CHANG: -- but it's supposed to be --

THE COURT: You have the same thing. See, Mr. González said that you didn't have the same thing; that you had to go to his office to look at it.

MS. CHANG: So after the hearing, they delivered it to us after.

THE COURT: So you cranked it through your own software that shows the connectors?

MS. CHANG: It's actually the same software. And we're both using the trial version, but for some reason, their trial version doesn't have the board planning mode enabled.

THE COURT: Okay.

MS. CHANG: I'm not sure why that is. The board planning mode allows you to see the shaded regions, where --

THE COURT: All right. Now, you -- okay. So I see how the component thing works.

Now, you said there were different layers. Show me what you mean by "layers."

MS. CHANG: Mm-hm. So right now, selected are layers. Clicking through, L1 through L4 are the different --

THE COURT: Stick with that blue thing here.

MS. CHANG: Okay.

THE COURT: Tell me what I'm looking at.

MS. CHANG: So the PCB on this board has this number of layers, which I believe is pretty standard.

THE COURT: What word?

MS. CHANG: Well, my understanding is that the -- these first ones up until here are the various layers of the board. And then these other tabs show various features of the board.

THE COURT: I see four layers. Is that right?

MS. CHANG: Yes. That's my understanding. Waymo's counsel can correct me if I'm wrong.

MR. CORREDOR: I think that sounds right. Features on the letters --

THE COURT: That, to me, doesn't --

Show me how an engineer would use this blue screen here. This -- I don't get it. What am I -- what good does this screen do for an engineer?

MS. CHANG: I'm not sure what it tells an engineer. I think it shows them the layout and the electrical connections that need to be on the board, and where various components need to be placed.

MR. JACOBS: So my understanding, Your Honor, is that there are actually different electrical layers stacked on the board. The ones that I was familiar with as a youth had one layer on top of the plastic, but now they build these printed circuit boards with multiple electrical layers. And this is showing the result of applying the photoresist, and the copper disappearing, and leaving an electrical layer at various levels.

THE COURT: So this is before any components are attached? This is ready to receive the components attached?

MR. JAFFE: So I think this one is the bottom of the RT.

THE COURT: Yeah.

MR. JAFFE: And then there's the top, which is right there. And then there's also this one. So it's -- GND shows the location of the grounding. And this one -- SIG -- shows the signaling.

THE COURT: All right. The signaling.

Does this show the electrical --

In other words, take these. This one right here (indicating). Are all of those little tiny circles interconnected electrically? Can you tell if they're interconnected? I guess not.

MS. CHANG: It's hard to tell, I think, from this diagram, although if you go back to the 3-D view, there are

little labels next to the drivers that show which drivers relate to which diode.

THE COURT: So there are four layers to the PCB board that are somehow laminated together. Is that correct?

MS. CHANG: That's my understanding. We'd be pleased to pipe in, if I'm saying --

MR. CORREDOR: All correct, Your Honor.

THE COURT: So just when you show your proof that there's been a copying of this, will the accused board have four layers to it?

MR. JAFFE: It will, but I can tell you what we're going to be talking about --

THE COURT: Yeah. What's that?

MR. JAFFE: -- is the position of those components right there (indicating), and the number.

THE COURT: Didn't I already rule that out?

MS. CHANG: Yes, Your Honor.

THE COURT: I think I ruled that out. I think that goes back to Galileo, and Matthew Brady.

MR. JAFFE: This is what I was going to explain earlier, and I'm happy to address, which is what Your Honor said is -- I think what you -- your implementation -- that's possibly a trade secret. That's what Your Honor said when we were talking about this.

THE COURT: All right.

MR. JAFFE: So we heeded Your Honor's advice, and we aren't talking about our implementation here.

THE COURT: All right. So this exact configuration, spacing, and everything of the -- you're saying has been duplicated?

MR. JAFFE: "Exact" is -- there's going to be -- there's going to be size differences. And there are going to be things. I'm not going to say "exact," but we think there's evidence of use, which is what we're looking for here in a trade-secret case.

MS. CHANG: So, Your Honor, just so that we're clear, this is an ongoing dispute: Whether they're claiming the general positioning, or whether they're saying that the exact X-Y coordinates and data of each diode, or if it's something in between. It's hard for us to determine what they're saying that we are doing.

THE COURT: Does the designation here --

MS. CHANG: We can show you what it says.

MR. JAFFE: It's right here.

(Whereupon a document was tendered to the Court.)

MR. JAFFE: It's the same thing.

THE COURT: Are you looking at the same thing here?

MS. CHANG: Yeah. This is -- this is the entirety of their trade secret --

THE COURT: Right here?

MS. CHANG: Yeah. Well, this is background information. And this is what they're claiming.

THE COURT: Well, can I read that out loud? That has nothing secret there; is it?

MR. JAFFE: Ah, I think this file path may be something that they keep confidential. Oh.

THE COURT: I'll rule that out.

MR. JAFFE: Oh, and also the designation may -- of which letter may give off some numbers.

THE COURT: All right. I'm going to read. I'll omit that, too.

Trade secret claim is the GBR3 PCB transmit board -- redact -- *designs, schematics, and layouts contained in folder* -- redact.

But I mean: That's very broad.

And now you're saying it's coming down to the positioning of the diode?

MR. JAFFE: And -- and --

THE COURT: I mean, that's ignoring 99.9 percent of what you designated.

MS. CHANG: Exactly. Your Honor, if you'll recall, there were other trade secrets that captured those allegations; namely, Trade Secret 1 and 4. Sorry. Actually, 1 and -- I think I based a gander -- it was -- I thought it was 4, but -- oh, actually it was 1 and 4.

So if you'll remember, there were other trade secrets in this case that went to that aspect of their board.

THE COURT: Yeah. I remember.

MS. CHANG: And now they're trying to sweep in those trade secrets into 96, because you have already ruled on Trade Secret 1 and 4.

MR. JAFFE: So I disagree with that. And I'm -- I'd like the opportunity to address it, but I am --

THE COURT: All right. I'm not going to make any ruling right now.

MS. CHANG: There are additional items in these files that I would like to point out to you.

THE COURT: But here's the thing that I want -- I really am worried about this, and the fairness of it of If the Uber side gets this designation, how were they supposed to know from your designation what to go out and find prior art on, to show that it's in the public domain?

MR. JAFFE: So --

THE COURT: I mean, they could be wasting hundreds of hours of time on this inductor, or the diode, or four layers versus three layers. How are they supposed to know how to spend their resources on this?

MR. JAFFE: So there's two points, Your Honor.

THE COURT: Mm-hm.

MR. JAFFE: Number one is this is our -- this is the

list that we've provided them.

THE COURT: This is the original in March?

MR. JAFFE: March 10th.

THE COURT: Mm-hm.

MR. JAFFE: And what we explained is that the details that we're talking about, which is the -- this material right here -- and that I'm not going to read into the record, but we explained to them at the beginning what we're talking about that we're claiming here that is a trade secret.

So what we disclosed is two things.

We disclosed a specific schematic. This one PCB. Okay? Out of 14,000 files, we narrowed it to this one schematic.

And beyond doing that, we provided them on notice of what is a trade secret about the schematic. And, from a 2019 perspective looking at how the law requires us to identify these, we have identified what the trade secret is with reasonable particularity.

MS. CHANG: Your Honor, a few points. First of all, you'll note that in the exact same sentence that Mr. Jaffe pointed out --

THE COURT: Wait a minute. Are we looking at this?

MS. CHANG: Yes, we are. Sorry, Your Honor.

THE COURT: Doesn't quite look right. Yeah, I guess it is. What is it that you wanted me to say?

MS. CHANG: He pointed out with reasonable

particularity the items on the board, but you'll see that this sentence starts with "For example." So that's a nonlimiting term. These are just exemplary items from the schematics that are claimed within this trade secret.

As you'll recall, there are other components on this board that are captured by other trade secrets. For example, this (indicating). I don't want to reveal any trade secrets. So this --

MR. JAFFE: Right. I appreciate that. Please don't.

MS. CHANG: -- circular item there is another one of their trade secrets which they claim, which is one of their narrowed trade secretes. It's unclear to us whether sweeping in Trade Secret 96, that also sweeps in Trade Secret 14, which is one of their narrowed trade secrets.

THE COURT: How many -- all right. Keep going through, and show me more of this.

MS. CHANG: As I said before, we could go through and click on all of the components on this schematic. And these -- as I stated before, these in particular are the subject of the '936 patent. So this is the inductor that's at issue.

THE COURT: Is that the one you wanted to bring the summary-judgment motion on?

MS. CHANG: Yes, Your Honor.

Here are the capacitors. There are three of them.

THE COURT: All right. How can something that's in

the -- in the patent, itself, be claims and trade secret?

MR. JAFFE: We are not claiming what's in the patent.

THE COURT: But you did you claimed this whole file. And there it is.

MR. JAFFE: So I want to be very particular here. We claimed what this schematic shows for a particular use on a particular board.

We are not claiming that what is disclosed in the patent as a trade secret. We're just -- and --

THE COURT: Did you except that out someplace? Did you say, *except as shown in patents*, or something?

MR. JAFFE: So what we did is we identified the schematic. And we are aware that we, Waymo, have patents. This wasn't -- we've been asserting them in this case. This is not a surprise to anybody. And so what we did in our trade-secret list is identified the things that are unique and entitled to trade-secret protection in this schematic, as opposed to things that are claimed in our patent.

THE COURT: Well, but this doesn't carve out the patents here. It says, *The trade secret claimed is*, and then -- I read it earlier.

Schematics and layouts contained in --

MR. JAFFE: That's right. And so we're claiming what's there. And we've explained what about this is a trade secret, in two bullets above, in the same --

THE COURT: Let me read that.

MR. JAFFE: What is unique.

(Pause in proceedings.)

THE COURT: So is it this? Is the "For example" sentence -- that narrowed it? Is that your view?

MR. JAFFE: It is, Your Honor, but I would also say --

THE COURT: It goes to the point that the "For example" is not limiting.

MR. JAFFE: If Your Honor is -- we would be happy to take out the "For example," if that is an issue, at all. So --

THE COURT: But I mean you -- it's not a negotiation. I mean, I've got to rule on it the way you've laid it out here.

MR. JAFFE: Well, so I'd like to address that, which is -- so we served this in March. We did not hear anything from the other side about this list or Trade Secret 96 for months and months and months.

Two. Like, in August, after we served our list, on Friday night they sent US an e-mail saying, *We're moving to strike*.

We responded to them Sunday evening, and we said, *We're willing to meet and confer*.

We got them on the phone with them in a meet-and-confer on Monday, and said, *What do you want us to do? This is the first time we've heard of this. We're weeks away from fact discovery*.

They said, You can't do anything, because it's too late. And moving to strike this is pure gamesmanship. In almost every one of these 2019 statements, "I don't know."

THE COURT: I don't know if it's -- even your "For example" says, *Such as the layout arrangement and number of layer diodes, the selection and layout of individual electrical components*.

Let's just stop there. That's -- every single box, circle, and line on that thing is the layout -- selection and layout, and the required manufacturer. There's not a thing there that's not covered by your "For example." I don't see how that limits anything.

MS. CHANG: Your Honor, and to respond to Mr. Jaffe's statement just now, as you recall that you brought 121 trade secrets at the beginning. And you, yourself, said that some of them were -- seemed like they could be trade secrets, and others were questionable. And you directed Waymo to narrow that list, but that in the meantime, we were going to proceed on all 121. We were frankly very surprised that they chose 96 as one of their 9 from the 121-B, because in our view 96 is a catchall trade secret. They had the opportunity to narrow nine that were particularized and met the requirements of identifying the trade secret with reasonable particularity. They're the ones that chose to choose that as a catchall trade secret.

That puts us in the untenable position of trying to figure out what about this trade secret that's not covered in other trade secrets they're trying to allege.

THE COURT: Well, all right.

MS. CHANG: May I show you additional information --

THE COURT: Go ahead. Show me additional information.

MS. CHANG: -- in the folder?

THE COURT: Let me ask my law clerk a question. Do we have this thing; the designation of all of these trade secrets?

MS. CHANG: I can also leave you while you're --

LAW CLERK: We definitely have it.

MS. CHANG: I just want to show you that in addition to that schematic within this folder, there are additional fields which are part of their trade secret, including this Pick and Place file.

THE COURT: The what? Pick and Place?

MS. CHANG: Okay. For some reason, their trial version doesn't allow you to open this file; but when you open this file, it gives you a listing of all of the components; their X/Y positions; the data, where applicable. I'm not sure why your license would not allow me to do this (indicating), but it's not just the schematic that's claimed by this trade secret. There's a host of other information relating to the

components on the board and the way they're positioned and placed. That's part of this trade secret.

For example, their trade secret includes the positioning information for all of the components. It's unclear to us.

There's also a bill of materials. I'm not sure why.

MR. JAFFE: We're talking about one printed circuit board in one file out of 14,000 files. I mean, we have narrowed incredibly, of the -- of -- and this is one that he downloaded.

THE COURT: Yeah, but -- I know, but not everything on every circuit board is going to be a trade secret, though. It will --

MR. JAFFE: And if they can show that it's not a trade secret, that -- that is up to them. And it's an issue of fact that we are happy to address at trial; but from a 2019 perspective, we have identified one printed circuit board. One printed circuit board.

THE COURT: Yes. That's one printed circuit board, with thousands of pages of material here. And for them to go and show that it's in the public domain would be a very huge task, because they don't know which part of it that you're --

Like the manufacturing tolerances. Show me where the manufacturing tolerances are shown on this file.

MS. CHANG: Your Honor, so I think that might be in the Pick and Place file that -- this is not pulling up, for

whatever reason. We were able to pull it up.

THE COURT: I had asked you to bring it to me in the very form that it was produced to you, to your side, so that I could see what the problem was.

MS. CHANG: We could have brought our computer, but it was our understanding that Waymo was supposed to bring the computer.

THE COURT: That was the way I had ordered it.

Is this the way that you produced it to the other side, so there's a bogus file, and they can't even access the data that's on there?

MR. JAFFE: We did not produce any bogus files.

THE COURT: Then why can't you --

You get here, and show me what she's complaining about.

MR. JAFFE: I'm not sure what she's complaining about.

THE COURT: She'd like to show the Pick and Place files. It says that your license doesn't support it.

MR. CORREDOR: We had provided the same version in the review computer.

MR. JAFFE: So my understanding is this version is the same version that we provided for them to review.

MR. JACOBS: Yeah. I think the confusion here is -- they gave us files. The files depend on an application to review. Their version of the application does not allow

viewing all of the files. Apparently, our version of the application allows us to view files that they are not allowing. This version does not allow --

MR. JAFFE: This is an incredibly -- it's an expensive piece of software to download, and so we have the trial license that we've provided both on the review computer and for Your Honor.

THE COURT: I don't know what a trial license is. What -- you mean like jury trial? Are you talking about experiment --

MS. CHANG: No. It means --

Because a lot of software companies -- a lot of people don't want to buy the software until you can test it. So they give people -- allow people to test the software for a couple weeks.

THE COURT: It's like a free look?

MS. CHANG: Yes. Exactly.

THE COURT: All right. So this is cheap, free look?

MS. CHANG: Version.

THE COURT: But not the --

MS. CHANG: I can represent to you that if you double click on the Pick and Place file, it shows you all of the information that the machine would need to place the components on the board. It also includes information about the positioning; the angle.

THE COURT: All right. Could you tell me how many independent, stand-alone, separate pages are required to view every item of information in the file?

MS. CHANG: So I want to say it's at least -- I want to say at least 182 on the low end, but that's underestimating, because if you look at that one main schematic that we looked at, that has 177 components; but I don't know if that includes each of the -- like, if you sometimes click on one component, it has multiple layers within that component, just like the connector had the top and the bottom. So it's hard for me to tell you how many pages it would be; but as you can see here, you have multiple items within various files. And I haven't even shown you all of the files yet. I'm showing you the things that I think are the most important.

There are also electronic schematics in this folder that showed the electrical circuits for this board.

THE COURT: That's what I wanted to see earlier, and you said they weren't here.

MS. CHANG: Oh, excuse me. So that's the view that shows you how they're connected.

I was talking about just the circuit diagram.

MR. CORREDOR: We looked at one of them earlier.

THE COURT: Show me that one.

MS. CHANG: We did look at one of them. There are either three of them. This is the first one (indicating). And

you can zoom in.

THE COURT: Why is it upside down?

MS. CHANG: I'm not sure.

THE COURT: I think it was upside down. Now it's correct.

MS. CHANG: It's -- I think it's just the border.

MR. CORREDOR: The header.

MS. CHANG: The headers are upside down. That's one schematic.

There's another schematic. And I believe you can double click on each of these components on the schematics, themselves, to get additional information. So you can see what that is here.

Here's the part number, the manufacturer, various parameters of that component.

THE COURT: Well, when the disclose --

Don't. Leave that page up there.

Let me ask Waymo. When the disclosure refers here to "required manufacturing tolerances," show me -- show me an example of a required manufacturing tolerance.

MR. CORREDOR: I think that's in the Pick and Place information that we can't access on this version of the software; but it would be, like -- because every component has an associated X and Y; an angular position. It would be like a plus or minus to that. Like, there's a certain number.

MS. CHANG: Your Honor, actually, I think we may be able to view that if we go to --

MR. CORREDOR: Because it's understood that the machine would be replacing -- the components would not be placing them at the exact X and Y position that's in the schematic, because there's some manufacturing tolerance. And so it's just -- it shows you, you know, what Waymo is using as a manufacturing tolerance.

MS. CHANG: I just realized there may be a way to look at manufacturing tolerances on the main board. I'll pull that up --

THE COURT: Yeah. Go ahead.

MS. CHANG: -- and have them show you.

Your Honor may remember that one of the trade secrets is how to position the components on the board vis-à-vis a certain circular component.

THE COURT: Talking about these components (indicating).

MS. CHANG: Right. And you measure it. It's -- the X-Y location is determined based on this component right here (indicating).

THE COURT: Yeah.

MS. CHANG: So if you put the cursor and toggle over the component --

THE COURT: It would be both of these. Right?

MS. CHANG: Yes.

THE COURT: That's what that green arrow in the red --

MR. CORREDOR: It's actually --

MS. CHANG: Yes. If you toggle over various components, you'll see an XY and a DXEY. I believe those would be the tolerances. Is that right?

THE COURT: Delta X and Delta Y would be the tolerances.

MR. CORREDOR: No, I don't think that's right.

MS. CHANG: Aren't the tolerances --

I think these units are smaller, though.

MR. CORREDOR: No. It's smaller.

MS. CHANG: Okay.

MR. CORREDOR: I don't know what DX and DY are, but I'm pretty sure they're not the tolerances.

THE COURT: Why don't you look at X? It said a certain number, and then DX. Core. That's a very large number. Mils are, I think --

MR. CORREDOR: -- a thousandth of an inch.

THE COURT: How are they supposed do that homework, if you guys don't even know what they are?

MS. CHANG: Could your --

MR. CORREDOR: I think it's about --

THE COURT: I believe that that is possibly a

tolerance, but you should -- I'm not sure, you know, what the m-i-l really stands for in there.

MR. CORREDOR: Yes. It's a mil. It's a thousandth of an inch.

MS. CHANG: You know, Your Honor, we would request that Waymo identify where we can find the manufacturing tolerances.

THE COURT: All right. Why don't you show me?

MR. CORREDOR: It's in the Pick and Place file, which we cannot access here.

MS. CHANG: That was just a guess that I made. I actually haven't seen the manufacturing tolerances. Are you sure the manufacturing tolerances are in the Pick and Place file?

MR. CORREDOR: I'm pretty sure. I can't access them on this version. I'll see if there something elsewhere. We can view them sometimes --

THE COURT: What do you see? What are you looking for?

MR. CORREDOR: I'm trying to see if I can find it. And it's loading. It's working.

MS. CHANG: Your Honor, as you can see, there are multiple windows that can be pulled up for the schematic. If we wanted to print out each window that's captured by the schematic, it would be quite a bit of material.

THE COURT: What is "quite a bit"? I don't know. Is that 187? 187,000? What number are you --

MS. CHANG: It's hard for me to tell, because we haven't gone through all of the windows; but I know that it would be at least 183, at minimum.

THE COURT: You said there were 177 components?

MS. CHANG: And then there's the bill-of-materials file.

THE COURT: But each component's going to have several pages?

MS. CHANG: That's right.

THE COURT: Is this -- is this -- okay. What are we looking at there?

MR. CORREDOR: This is one of the outputs. So basically one of the outputs of this file will have the manufacturing tolerances, but I think it's the Pick and Place information. This is just an output, and -- that you can use an engineering drawing. And it's different layers, so it shows -- you know, so that you can export it into a .pdf or something like that --

MS. CHANG: How did you get to that?

MR. CORREDOR: -- file. Sorry.

MS. CHANG: In order to manufacture these boards, there are various outputs that you can make. So if you also count those files as being captured by this trade secret, then

that also increases the number of files.

THE COURT: Is these data angles? Is that what you call them?

MS. CHANG: Yes, Your Honor.

THE COURT: Are those in this file somewhere?

MS. CHANG: Yes, they are.

THE COURT: All right. Do you know, do you have to drive them, or are they expressly there?

MS. CHANG: They're expressly there.

MR. CORREDOR: And I don't think this version is letting us see. Some of the outputs are blocked in this software version, so I'm not sure I can pull out the manufacturing tolerances.

MS. CHANG: Your Honor, I can represent to you right now that our diodes don't have the X-Y coordinates and data angles that Waymo's board does. So if that's they're trade secret --

MR. JAFFE: We're going to put together -- they're going to -- we've been litigating this since the beginning of this case, and we contend otherwise. And we are going to provide -- we've provided evidence in our interrogatory responses. We've found evidence in discovery, and we are serving our expert report. And tomorrow, that's going to explain why what she said is incorrect.

THE COURT: Now, it's important for me to see it

tomorrow. I want to see the -- I've been waiting for this offer of proof. I don't want to have to ask for it. I'd like for it to land on my desk tomorrow.

MR. JAFFE: Okay. I actually -- if we're going to change topics, I actually would seek some guidance from Your Honor on what the form and kind of level of detail that you're looking for is, because we're also serving our expert reports tomorrow, as well.

THE COURT: Well, I asked for -- your expert report is one thing. I don't want you just saying, *Go look at the expert report*.

I would like for there to be a detailed offer of proof, so that I can --

This is not the only reason, but part of what I'm trying to do is figure out -- let's just take this. What is it that is the -- are you contending that Uber, itself, actually uses it in their design? And if so, what is the part that is being used?

MR. JAFFE: Okay.

THE COURT: I don't want to say much more than that. I --

MR. JAFFE: So --

THE COURT: Please don't do this to me. Please don't negotiate with me, and come back and say, *Oh, Your Honor, one more of that*.

It may be that I just say, *Look. Enough is enough. That's not good enough. End of story. That one is out.*

And don't come back and say, *Oh, if we'd only known that you wanted more, we would have given you more.*

You put in your best case. B-e-s-t case. That's what I want to see.

MR. JAFFE: Well, so --

THE COURT: We can't just let this go on as a continuing negotiation over what you get to put on at trial. The time has come to show me what your case is going to be, so that I can -- we've got a massive trial. It's got to get whittled back to something that's triable.

And if it turns out that this resembles what you showed me at the outset, which Galileo came up with, then forget it. It's not going to go to the jury.

I have a suspicion that what you want to do is put this (indicating) up there, because it looks like vaguely that thing that they got from the vendor. And then that's going to be -- it's going to be smoke and mirrors, instead of exact, exact duplication.

Every optician can tell you that it's -- they're going to have to be some arrangement that's going to look similar to this. Everybody. I can even tell you that, because you have to have a strategy for where your beams are going to fall.

MR. JAFFE: Your Honor, I want to respond to this --

THE COURT: Yes.

MR. JAFFE: -- but I do not want to go into the confidential information.

THE COURT: All right. We're -- I've seen enough. I'm going to go back on the bench. I'm going to give you a chance to do it right now, because I'm going to clear the courtroom, so you have a chance to do that.

All right. Everybody in the courtroom is going to have to leave, because we're going to get into some confidential business information. So I'm sorry to do that to you. Thank you.

(The following pages 43 through 84 were placed under seal by Order of the Court, and bound separately:)

/////

/////

/////

/////

/////

/////

/////

/////

/////

/////

/////

/////

(Whereupon the following was heard in open court.)

THE CLERK: I'm sorry, Your Honor. Is this part under seal?

THE COURT: No, because this is the Judge talking, and the Judge knows what's in the public domain.

THE CLERK: Okay.

THE COURT: All right. So all of these points come to the lens. That's the whole point of -- the lens is curved, so it can do this.

All of that -- the light gets collected by the lens from Point C. And it will come to rest right there (indicating).

Same thing with B. I'm not going to draw these in. There are an infinite number of points on the surface of that lens that's curved that will redirect it to Point C. So C will appear on the film or at this point behind the lens upside down, inverse, left to right. C is going to appear right there.

But it's because each one of these lines -- it's -- they're slightly off parallel, because they're -- you can see. You're dealing with the width of the lens. They get focused. That's why a lens collects light to begin with. So when you have, like, a 200-inch mirror or a 200-inch lens, it's a huge thing that collects all that have light from a distant star.

MR. CORREDOR: But *What's this lens' focal length?* is the question.

THE COURT: Typically it would be 8 inches, 12 inches, something like that.

MR. CORREDOR: But it's this the focal length?

THE COURT: Okay. It would be, like, 8 inches there. And then but here, it -- you measure the focal length by the -- at infinity. So it's going to be more like this is the 8 inches. And this would be more like 12. It's further away.

The things that are closer in, you focus further away than things that are at infinity. So if it's an 8-inch focal length, then the one that's farthest out is going to be pretty close to 8 inches. And these distances would be about 8 inches.

For the ones that are close in, it would be slightly more. Slightly more.

So these are not parallel. They're close to parallel, but these lines in here -- there are an infinite number of them, because they're all emanating from Point C.

Spreading out, the lens collects it, and focuses back together. And that image shows up right there. It's C. And you can see it on the ground, glass upside down, left to right. I do it all of the time with my camera. I've done this for 30 years, 40 years. Same thing with B. And that's why the image -- that's why the image can be seen, is because it collects that light straight across the lens.

So it's the same thing in reverse, if you're trying to

project. You're trying to project a light beam from point -- you've got a laser diode right here. And it's a bright tip of light. Then that light is going to be spread across the back of the lens like that. And then it's all going to get focused down towards C.

So now you all think about that. And if I'm wrong, I'll be happy to learn it.

MR. JACOBS: Your Honor, may we use our cameras in the courtroom to take pictures of these?

THE COURT: Take a picture of this ridiculous diagram that I drew. And so -- but see, I'm meaning to show upside down. And then, of course, they have to be left to right, too.

Stand where I was, so you get a better benefit.

MS. CHANG: You don't want to stand next to the picture?

THE COURT: I don't want to. You all have -- I have to bring this to a close, because I've got another hearing. I've got another hearing. Okay. I really do. I've got another hearing. That's why this person came in.

Do you all mind if I bring it to a close now?

MR. JACOBS: Thank you, Your Honor.

THE COURT: And I want to stress if I'm wrong on the optics, I'll be the first to admit it. This is the way I understand it. So now you can see what you're up against. Maybe you can convince me that I'm wrong. Yes.

THE CLERK: Portion of the transcript that's under seal -- are the attorneys able to have it, so the court reporter can --

THE COURT: Yes, the court reporter.

The part of this where I did the little diagram up there -- everybody agrees that's not under seal. Correct?

MR. JACOBS: Correct.

MR. JAFFE: Yes.

THE COURT: So that, Lydia, you can make that part of the public thing.

And you can make my diagram -- that can also be made public.

Okay. I need to run.

MR. JAFFE: Your Honor, can I just ask one scheduling matter?

THE COURT: Yeah. Sure.

MR. JAFFE: We talked about the order of proof that we'll submit tomorrow. And then I think you mentioned that they would get a response. We would ask to be able to respond to whatever they say in a --

THE COURT: You've got do it pronto, because I'm not going to wait. I am -- see, I'm not even going to guess.

(Discussion off the record.)

THE COURT: All right. My law clerk says --

(Discussion off the record.)

THE COURT: So Uber gets one week to respond to what?

THE CLERK: To the offer of proof.

THE COURT: All right. To the offer of proof.

And then they get a week to respond back. I'm going to give you each days -- four days, and four days; not a week.

MR. JACOBS: And just further clarification, because different words were used. This is about the Trade Secret 96 adequacy question? We're not responding --

THE COURT: That is why I'm worried about that. I still have not ruled on the adequacy of that disclosure.

MR. JAFFE: No. It -- just about that one piece.

THE COURT: That is the whole purpose of this hearing, because I feel like it was a grossly overbroad designation. And I'm trying to figure out what's the right thing to do here.

MS. CHANG: Your Honor, I'm sorry. I think we're talking about two different things. There's a motion. Okay.

MR. JACOBS: No. We're good. We're talking about responding on 96.

THE COURT: On 96. But how 96 ties what the offer-of-proof theory is was going to help me see how fair or unfair that disclosure was. All right?

MS. CHANG: Okay. Thanks.

THE COURT: All right. Thank you.

(At 10:59 a.m. the proceedings were adjourned.)

I certify that the foregoing is a correct excerpt of the transcript from the record of proceedings in the above-entitled matter.

August 23, 2017

Signature of Court Reporter/Transcriber Date

Lydia Zinn